

Section 302.105 ~~Antidegradation~~

The purpose of this Section is to protect existing uses of all waters of the State of Illinois, maintain the quality of waters with quality that is better than water quality standards, and prevent unnecessary deterioration of waters of the State.

a) Existing Uses

Uses actually attained in a surface water body or water body segment on or after November 28, 1975, whether or not they are included in the water quality standards, must be maintained and protected. Examples of degradation of existing uses of the waters of the State include:

- 1) an action that would result in the deterioration of the existing aquatic community, such as a shift from a community of predominantly pollutant-sensitive species to pollutant-tolerant species or a loss of species diversity;
- 2) an action that would result in a loss of a resident or indigenous species whose presence is necessary to sustain commercial or recreational activities; or
- 3) an action that would preclude continued use of a surface water body or water body segment for a public water supply or for recreational or commercial fishing, swimming, paddling or boating.

b) Outstanding Resource Waters

1) Waters that are designated as Outstanding Resource Waters (ORWs) pursuant to [35 Ill. Adm. Code 303.205](#) and listed in [35 Ill. Adm. Code 303.206](#) must not be lowered in quality except as provided below:

- A) Activities that result in short-term, temporary (i.e., weeks or months) lowering of water quality in an ORW; or
- B) Existing site stormwater discharges that comply with applicable federal and State stormwater management regulations and do not result in a violation of any water quality standards.

2) Any activity in subsection (b)(1)(A) or (b)(1)(B) that requires a National Pollutant

Discharge Elimination System (NPDES) or a Clean Water Act (CWA) Section 401 certification must also comply with subsection (c)(2).

3) Any activity listed in subsection (b)(1) or any other proposed increase in pollutant loading to an ORW must also meet the following requirements:

A) All existing uses of the water will be fully protected; and

B) Except for activities falling under one of the exceptions provided in subsection (b)(1)(A) or (B):

i) The proposed increase in pollutant loading is necessary for an activity that will improve water quality in the ORW; and

ii) The improvement could not be practicably achieved without the proposed increase in pollutant loading.

4) Any proposed increase in pollutant loading requiring an NPDES permit or a CWA 401 certification for an ORW must be assessed pursuant to subsection (f) to determine compliance with this Section.

c) High Quality Waters

1) Except as otherwise provided in subsection (d) of this Section, waters of the State whose existing quality is better than any of the established standards of this Part must be maintained in their present high quality, unless the lowering of water quality is necessary to accommodate important economic or social development.

2) The Agency must assess any proposed increase in pollutant loading that necessitates a new, renewed or modified NPDES permit or any activity requiring a CWA Section 401 certification to determine compliance with this Section. The assessment to determine compliance with this Section must be made on a case-by-case basis. In making this assessment, the Agency must:

A) Consider the fate and effect of any parameters proposed for an increased pollutant loading.

B) Assure the following:

i) The applicable numeric or narrative water quality standard will not be exceeded as a result of the proposed activity;

ii) All existing uses will be fully protected;

iii) All technically and economically reasonable measures to avoid or minimize the extent of the proposed increase in pollutant loading have been incorporated into the proposed

activity; and

iv) The activity that results in an increased pollutant loading will benefit the community at large.

C) Utilize the following information sources, when available:

i) Information, data or reports available to the Agency from its own sources;

ii) Information, data or reports supplied by the applicant;

iii) Agency experience with factually similar permitting scenarios; and

iv) Any other valid information available to the Agency.

d) Activities Not Subject to a Further ~~Antidegradation~~ Assessment

The following activities will not be subject to a further ~~antidegradation~~ assessment pursuant to subsection (c) of this Section.

1) Short-term, temporary (i.e., weeks or months) lowering of water quality;

2) Bypasses that are not prohibited at [40 CFR 122.41\(m\)](#);

3) Response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, corrective actions pursuant to the Resource Conservation and Recovery Act (RCRA), as amended, or similar federal or State authority, taken to alleviate a release into the environment of hazardous substances, pollutants or contaminants which may pose a danger to public health or welfare;

4) Thermal discharges that have been approved through a CWA Section 316(a) demonstration;

5) New or increased discharges of a non-contact cooling water:

A) without additives, except as provided in subsection (d)(5)(B), returned to the same body of water from which it was taken, as defined by [35 Ill. Adm. Code 352.104](#), provided that the discharge complies with applicable Illinois thermal standards; or

B) containing chlorine when the non-contact cooling water is treated to remove residual chlorine, and returned to the same body of water from which it was taken, as defined in [35 Ill. Adm. Code 352.104](#), provided that the discharge complies with applicable Illinois thermal and effluent standards at [35 Ill. Adm. Code 302](#), [303](#), and 304;

6) Discharges permitted under a current general NPDES permit as provided by 415 ILCS 5/39(b) or a nationwide or regional CWA Section 404 permit are not subject to facility-

specific ~~antidegradation~~ review; however, the Agency must assure that individual permits or certifications are required prior to all new pollutant loadings or hydrological modifications that necessitate a new, renewed or modified NPDES permit or CWA Section 401 certification that affects waters of particular biological significance. Waters of particular biological significance may include streams listed in a 1991 publication by the Illinois Department of Conservation entitled "Biologically Significant Illinois Streams"; or

7) Changes to or inclusion of a new permit limitation that does not result in an actual increase of a pollutant loading, such as those stemming from improved monitoring data, new analytical testing methods, new or revised technology or water quality based effluent limits.

e) Lake Michigan Basin

Waters in the Lake Michigan basin as identified in [35 Ill. Adm. Code 303.443](#) are also subject to the requirements applicable to bioaccumulative chemicals of concern found at [Section 302.521](#) of this Part.

f) ~~Antidegradation~~ Assessments

In conducting an ~~antidegradation~~ assessment pursuant to this Section, the Agency must comply with the following procedures.

1) A permit application for any proposed increase in pollutant loading that necessitates the issuance of a new, renewed, or modified NPDES permit or a CWA Section 401 certification must include, to the extent necessary for the Agency to determine that the permit application meets the requirements of this Section, the following information:

A) Identification and characterization of the water body affected by the proposed load increase or proposed activity and the existing water body's uses. Characterization must address physical, biological and chemical conditions of the water body.

B) Identification and quantification of the proposed load increases for the applicable parameters and of the potential impacts of the proposed activity on the affected waters.

C) The purpose and anticipated benefits of the proposed activity. Such benefits may include:

i) Providing a centralized wastewater collection and treatment system for a previously unsewered community;

ii) Expansion to provide service for anticipated residential or industrial growth consistent with a community's long range urban planning;

iii) Addition of a new product line or production increase or modification at an industrial

facility; or

iv) An increase or the retention of current employment levels at a facility.

D) Assessments of alternatives to proposed increases in pollutant loading or activities subject to Agency certification pursuant to Section 401 of the CWA that result in less of a load increase, no load increase or minimal environmental degradation. Such alternatives may include:

i) Additional treatment levels, including no discharge alternatives;

ii) Discharge of waste to alternate locations, including publicly-owned treatment works and streams with greater assimilative capacity; or

iii) Manufacturing practices that incorporate pollution prevention techniques.

E) Any additional information the Agency may request.

F) Proof that a copy of the application has been provided to the Illinois Department of Natural Resources.

2) The Agency must complete an ~~antidegradation~~ assessment in accordance with the provisions of this Section on a case-by-case basis.

A) The Agency must consider the criteria stated in Section 302.105(c)(2).

B) The Agency must consider the information provided by the applicant pursuant to subsection (f)(1).

(C) After its assessment, the Agency must produce a written analysis addressing the requirements of this Section and provide a decision yielding one of the following results:

i) If the proposed activity meets the requirements of this Section, then the Agency must proceed with public notice of the NPDES permit or CWA Section 401 certification and include the written analysis as a part of the fact sheet accompanying the public notice;

ii) If the proposed activity does not meet the requirements of this Section, then the Agency must provide a written analysis to the applicant and must be available to discuss the deficiencies that led to the disapproval. The Agency may suggest methods to remedy the conflicts with the requirements of this Section;

iii) If the proposed activity does not meet the requirements of this Section, but some lowering of water quality is allowable, then the Agency will contact the applicant with the results of the review. If the reduced loading increase is acceptable to the applicant, upon the receipt of an amended application, the Agency will proceed to public notice; or if the reduced loading increase is not acceptable to the applicant, the Agency will

transmit its written review to the applicant in the context of a NPDES permit denial or a CWA Section 401 certification denial.

3) The Agency will conduct public notice and public participation through the public notice procedures found in [35 Ill. Adm. Code 309.109](#) or CWA Section 401 certifications. The Agency must incorporate the following information into a fact sheet accompanying the public notice:

A) A description of the activity, including identification of water quality parameters for which there will be an increased pollutant loading;

B) Identification of the affected surface water body or water body segment, any downstream surface water body or water body segment also expected to experience a lowering of water quality, characterization of the designated and current uses of the affected surface water body or water body segments and identification of which uses are most sensitive to the proposed load increase;

C) A summary of any review comments and recommendations provided by Illinois Department of Natural Resources, local or regional planning commissions, zoning boards and any other entities the Agency consults regarding the proposal;

D) An overview of alternatives considered by the applicant and identification of any provisions or alternatives imposed to lessen the load increase associated with the proposed activity; and

E) The name and telephone number of a contact person at the Agency who can provide additional information.

(Source: Amended at 22 Ill. Reg. 1356, effective December 24, 1997; amended at 26 Ill. Reg. 3505, effective February 22, 2002)

Citation: Title 35, Subtitle C, Part 352, Subpart I

Jurisdiction: Illinois

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Section Title: 352.900 Antidegradation Provisions for Bioaccumulative Chemicals of Concern (BCCs) (Integrated)

Subject water, water quality, surface water, point source, discharge, permitting,

Terms: NPDES, administrative, exemption, compliance, public participation

Source: Integrated Document

[Subpart I:](#) ~~Antidegradation~~ Provisions for Bioaccumulative Chemicals of Concern

Section 352.900 ~~Antidegradation~~ Provisions for Bioaccumulative Chemicals of Concern (BCCs)

Whenever a new or increased loading of any BCC is proposed from an existing or new facility or activity, either point or nonpoint source, that is subject to NPDES permitting, Clean Water Act Section 401 water quality certification, or Lake Michigan dredge and fill permits under Section 39(n) of the Illinois Environmental Protection Act [415 ILCS 5/39(n)], the Agency shall require an ~~antidegradation~~ demonstration.

a) Exceptions

1) Changes in loading of a BCC within the existing capacity and processes that are covered by the existing permit including but not limited to:

A) Normal operational variability including but not limited to intermittent increased discharges due to wet weather conditions;

B) Changes in intake water pollutants not caused by the discharger;

C) Increasing the production hours of the facility;

D) Increasing the rate of production.

2) New limits for an existing permitted discharge or activity that are not the result of changes in pollutant loading, and will not allow an increase in pollutant loading, including new limits that are a result of the following:

A) New or improved monitoring data;

B) New or improved analytical methods;

C) New or modified water quality criteria or values;

D) New or modified effluent limitations guidelines, pretreatment standards, or control requirements for POTWs.

3) Those actions listed in 35 Ill. Adm. Code 302.512(c), if determined to be exempt by the Agency, including:

A) Short term, temporary consisting of weeks or months lowering of water quality;

B) Bypasses that are not prohibited at [40 CFR 122.41\(m\)](#); and

C) Response actions pursuant to the comprehensive Environmental Response and Liability Act (CERCLA), as amended, or similar federal or State authority undertaken to alleviate a release into the environment of hazardous substances, pollutants or contaminants which may pose an imminent and substantial danger to public welfare.

b) ~~Antidegradation~~ Demonstrations

1) An entity seeking new or increased loading allowance for a BCC into the Lake Michigan Basin must complete and submit an ~~antidegradation~~ demonstration adequate to substantiate the important economic or social development expected to result and to specify the pollutant minimization plan to accompany any allowable increase in BCC loading for Agency review. The Agency will consult with such entities regarding the scope of the demonstration if requested. A demonstration will address the following elements pertaining to anticipated important economic and social development:

A) The extent to which employment will be increased in the area;

B) The extent to which production levels will increase in the area;

C) The extent to which the proposed change will avoid otherwise anticipated reduction in employment or production levels;

D) The extent to which the activity will be providing economic or social benefit to the area;

E) The extent to which the activity will be correcting an environmental or public health problem.

2) The demonstration must also address the sources of the BCC and include a comprehensive assessment of pollution prevention alternatives and alternative or enhanced treatment techniques. This analysis and any other relevant information will form the basis for a pollutant minimization plan to accompany any permissible increased loading allowance.

3) If the Agency tentatively determines that increased BCC loading is allowable pursuant to [35 Ill. Adm. Code 302.520](#)(a), such determination, including any conditions of the allowance such as but not limited to pollutant minimization steps, monitoring and reporting requirements, and special restrictions on operation, shall be fully described and subject to the public notice provisions of [35 Ill. Adm. Code 309](#) for NPDES permits, [35 Ill. Adm. Code 395](#) and the federal procedures established for the issuance of Clean Water Act Section 404 permits, or the procedures of Section 18 of the Rivers, Lakes and Streams Act [615 ILCS 5/18] for permits under Section 39(n) of the Illinois Environmental Protection Act [415 ILCS 5/39(n)]. Final action that would approve increased BCC loading shall not be taken until completion of the public participation process.

Section 302.521 Supplemental ~~≤≤Antidegradation≥≥~~ Provisions for BCCs

a) Notwithstanding the provisions of [Section 302.105](#), waters within the Lake Michigan Basin must not be lowered in quality due to new or increased loading of substances defined as bioaccumulative chemicals of concern (BCCs) in [Section 302.501](#) from any source or activity subject to the NPDES permitting, Section 401 water quality certification provisions of the Clean Water Act (P.L. 92-100, as amended), or joint permits from the Agency and the Department of Natural Resources under Section 39(n) of the Act [415 ILCS 5/39(n)] until and unless it can be affirmatively demonstrated that such change is necessary to accommodate important economic or social development.

1) Where ambient concentrations of a BCC exceed an applicable water quality criterion, no increase in loading of that BCC is allowed.

2) Where ambient concentrations of a BCC are below the applicable water quality criterion, a demonstration to Justify increase loading of that BCC must include the following:

A) Pollution Prevention Alternatives Analysis. Identify any cost-effective reasonably available pollution prevention alternatives and techniques that would eliminate or significantly reduce the extent of increased loading of the BCC.

B) Alternative or Enhanced Treatment Analysis. Identify alternative or enhanced treatment techniques that are cost effective and reasonably available to the entity that would eliminate or significantly reduce the extent of increased loading of the BCC.

C) Important Social or Economic Development Analysis. Identify the social or economic development and the benefits that would be foregone if the increased loading of the BCC is not allowed.

3) In no case shall increased loading of BCCs result in exceedence of applicable water quality criteria or concentrations exceeding the level of water quality necessary to protect existing uses.

4) Changes in loadings of any ECC within the existing capacity and processes of an existing NPDES authorized discharge, certified activity pursuant to Section 401 of the Clean Water Act, or joint permits from the Agency and the Department of Natural Resources under Section 39(n) of the Act are not subject to the ~~≤≤antidegradation≥≥~~ review of subsection (a) of this Section. These changes include but are not limited to:

A) normal operational variability, including, but not limited to, intermittent increased discharges due to wet weather conditions;

B) changes in intake water pollutants;

C) increasing the production hours of the facility; or

D) increasing the rate of production.

5) Any determination to allow increased loading of a BCC pursuant to a demonstration of important economic or social development need shall satisfy the public participation requirements of [40 CFR 25](#) prior to final issuance of the NPDES permit, Section 401 water quality certification, or joint permits from the Agency and the Illinois Department of Natural Resources under Section 39(n) of the Act.

b) The following actions are not subject to the provisions of subsection (a) of this Section, unless the Agency determines the circumstances of an individual situation warrant application of those provisions to adequately protect water quality:

1) Short-term, temporary (i.e., weeks or months) lowering of water quality;

2) Bypasses that are not prohibited at [40 CFR 122.41](#)(m); or

3) Response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or similar federal or State authority, undertaken to alleviate a release into the environment of hazardous substances, pollutants or contaminants that may pose danger to public health or welfare.

(Source: Added at 22 Ill. Reg. 1356, effective December 24, 1997; amended at 23 Ill. Reg. 11249, effective August 26, 1999)

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Section Title: 352.100 Introduction (Integrated)

Subject Terms: water, water quality, surface water, point source, discharge, permitting, NPDES

Source: Integrated Document

[Subpart A:](#) Introduction

Section 352.100 Introduction

This Part 352 contains Illinois Environmental Protection Agency (Illinois EPA or Agency) rules for the application of the Illinois Pollution Control Board (Illinois PCB) rules for the Lake Michigan Basin at 35 Illinois Adm. Code 302.Subparts A and E to the

National Pollutant Discharge Elimination System (NPDES) permit program administered for discharges to the Lake Michigan Basin within the State of Illinois. These rules are required pursuant to the Final Guidance for the Great Lakes System, 60 FR 15366 adopted on March 23, 1995 by the United States Environmental Protection Agency (USEPA) to implement Section 118(c)(2) of the Clean Water Act (33 U.S.C. 1268) as amended by the Great Lakes Critical Programs Act of 1990 (P.L. 101-596, 104 Stat. 3000). That guidance identifies minimum water quality standards, ~~antidegradation~~ policies and implementation procedures that states must establish for the Great Lakes System to protect human health, aquatic life and wildlife. The water quality standards, criteria and value derivation procedures, variance and site specific rulemaking procedures and ~~antidegradation~~ policies required under the Great Lakes Guidance and applicable to the Lake Michigan Basin, are contained in Illinois Pollution Control Board Rules. The implementation procedures required by that guidance are contained in this Part 352.

Citation: Title 35, Subtitle C, Part 352, Subpart A

Jurisdiction: Illinois

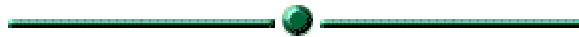
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Section Title: 352.106 Relationship to Other Regulations (Integrated)

Subject Terms: water, water quality, surface water, point source, discharge, permitting, NPDES

Source: Integrated Document



Section 352.106 Relationship to Other Regulations

[Appendix F to 40 CFR 132](#) requires 9 specific permit procedures for which Great Lakes states must adopt consistent provisions. Procedures 1 and 2 of the Appendix requires procedures for site-specific modifications to standards, criteria and values and procedures for variances from water quality standards, criteria and values for point sources. These requirements are within the authority of the Illinois Pollution Control Board, not Illinois EPA, and therefore not contained in this Part. These procedures are at 35 Ill. Adm. Code: [Subtitle A](#), Chapter 1. Procedures 3 through 9 of the Appendix require specific procedures for permit issuance and are contained in Subparts B through H of this Part. [Subpart I](#) contains Agency permitting procedures related to the special ~~antidegradation~~ provision for bioaccumulative chemicals of concern at 35 Ill. Adm. Code 305.521.